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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,894	04/15/2004	Michael J. Pratt	12073.5	7574
21999	7590	09/13/2006	EXAMINER	
KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111			HAWK, NOAH CHANDLER	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/824,894	Applicant(s) PRATT ET AL.	
	Examiner Noah C. Hawk	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8-6-04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the drawings submitted on 11/2/04 are replete with omissions and apparent errors. The following reference numbers are missing from the replacement figures: 2, 32, 34, 42, 44, 46, 48, 50, 60, 62, 64, 70, 72, 74, 80, 82, 86, 88, 90. Further, it appears that the following reference numbers have been applied to the incorrect features of the device: 14, 16, 18, 20, 36, 38, and 40. These reference numbers appear to have been assigned to elements depicted in the figures with no regard for the description given in the specification. An example of this is the use of the numbers 14, 16, 18 and 20 to refer to what appears to be the rocker portion of the device. The reference number 36 is used to identify two different elements (see figures 3 and 4). The number 40 appears to identify the seat itself, and not the rocker element as stated in the specification. In short, the drawings, when considered in combination with the specification, are confusing and replete with erroneous and missing labels. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the fact that the

rocking element is "removable coupled to" the "support platform" as recited in Claim 1 and that the rocking means are "removably attached" to the "seat portion" as recited in Claim 23 must be shown or the feature(s) canceled from the claim(s). Further, the "seat portion removably coupled to a back rest portion" recited in Claim 2, the "securing element" described in Claims 20-22, the seat portion "adjustable relative to said back rest portion" recited in Claim 24 and the securing element described in Claims 38-40 must be shown or the feature cancelled from the claims. Also, it is unclear how the traction elements (assumed to be shown as element 24 in figures 3 and 4 since reference number 50 does not appear) would contact the ground, as they do not protrude from the rocking surface, and therefore, would not touch the ground on a hard surface. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1-22 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The limitation of “a user’s head, neck, back and thighs” in Claim 1 specifically limits the claim to particular part of the human body. A claim directed to or including within its scope a human being or attributes of a human being is not patentable subject matter. See MPEP §2105 and 1077 OG 24 (April 21, 1987). For the purposes of examination, any reference to a user or the user’s body will not be given any patentable weight.

5. Claims 23-40 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The limitation of “are capable of supporting a user” in Claim 23 specifically limits the claim to particular part of the human body. A claim directed to or including within its scope a human being or attributes of a human being is not patentable subject matter. See MPEP §2105 and 1077 OG 24 (April 21, 1987). For the purposes of examination, any reference to a user or the user’s body will not be given any patentable weight.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claim 1, the limitation of "a user's head, neck, back and thighs" specifically limits the claim to particular part of the human body. Since people come in all different shapes, sizes, abilities, and characteristics, the scope of the claim is unclear. See §101 rejections above.

8. Claims 8-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 is unclear: it is not possible for the contacting surface to be only partially contacting the ground anterior to the position of repose and then to be fully in contact with the ground when in the position of repose. A curved contacting surface would always have at least a part of its surface contacting the ground and part of its surface not in contact with the ground.

9. Claims 23-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In claim 23, the limitation of "are capable of supporting a user" specifically limits the claim to particular part of the human body. Since people come in all different shapes, sizes, abilities, and characteristics, the scope of the claim is unclear. See §101 rejections above.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-3, 5-8, 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Landry et al. in US Patent 4092041.

- a. Regarding Claim 1, Landry teaches a chair comprising a support portion (C) and a rocking element (A) removably coupled to the supporting element (insofar as the applicant shows a removably coupled relationship between the two elements).
- b. Regarding Claim 2, Landry further teaches that the support portion further comprises a seat portion (61) removably coupled to a back portion (81) (insofar as the applicant shows a removably coupled relationship between the two elements).
- c. Regarding Claim 3, Landry further teaches that the angle between the seat portion and the back rest portion is between about 100 and 150 degrees (Landry teaches an adjustable relationship between the seat and the back rest: any of the positions between 100 and 150 degrees are possible).
- d. Regarding Claim 5, Landry further teaches that the rocking element substantially cradles the support portion (the rocking portion supports the support

portion on two sides, the bottom and the back, which is considered sufficiently cradle-like).

e. Regarding Claim 6, Landry further teaches that the rocking element further comprises at least one supporting arc (10b) having a contact surface capable of supporting said chair with respect to the ground.

f. Regarding Claim 7, Landry teaches that the contact surface further comprises a stabilizing portion (22a) corresponding to the position of repose.

g. Regarding Claim 8, Landry further teaches that the contact surface rotates along a length of said supporting arc such that contact surface only partially contacts said ground anterior to said position of repose and such that said contact surface substantially fully contacts said ground beyond said position of repose (insofar as the applicant shows this).

h. Regarding Claim 11, Landry further teaches that the supporting arc extends beyond (in section 24a) a length of said rocking element to prevent over-rotation of said rocking element.

i. Regarding Claim 12, Landry further teaches that one end (24a) of the supporting arc corresponds to a back surface of the supporting portion and a second end (20a) corresponds to a lateral edge thereof.

j. Regarding Claim 13, Landry further teaches that the support portion is contoured to substantially cradle a user (having a back and seat portion is considered substantially cradling).

- k. Regarding Claims 14 and 15, Landry further teaches a handle (10a) on the supporting portion.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

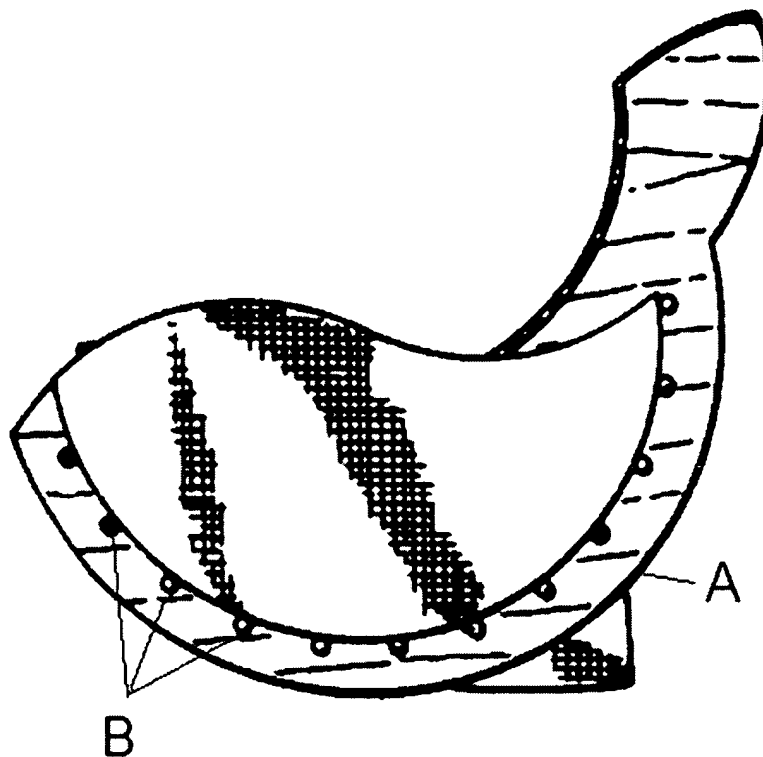
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landry as applied to Claim 3 above in view of the National Posture Ergonomics Document (NPED). Landry fails to specifically teach the 128 degree angle between the seat portion and back rest portion. The NPED teaches the use of a 128 degree angle between a seat and back rest portion of a chair for optimal comfort. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry as applied to Claim 3 by using an angle of 128 degrees between the back rest portion and the seat portion as taught by the NPED in order to provide the user with the optimal comfort angle.

14. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry as applied to Claim 8 above in view of Wade in US Patent D315643. Landry fails to teach traction elements on the contact surface. Wade teaches a chair with a contact surface (A) having traction elements comprising teeth (B) that are integral to the rocking surface (insofar as the applicant shows teeth on the rocking surface). It would have

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been obvious to one of ordinary skill in the art at the time of invention to modify the rocking surface of Landry by adding teeth in order to increase the grip the rocking surface has on a slippery surface.



Wade, Figure 4

15. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landry as applied to Claim 1 above in view of Royle et al. in US Patent 4997234. Landry fails to teach a protective covering on the support portion. Royle teaches a chair comprising a protective covering (see Royle, Column 3, lines 56-57). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry by

adding a protective covering as taught by Royle et al. in order to provide a replaceable covering which would extend the life of the device.

16. Claims 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry as applied to Claim 1 above in view of Lecarpentier in US Patent 3774961. Landry fails to teach a securing element. Lecarpentier discloses a securing element (comprising elements 3, 10, 9, 12, 13, 8, 14, 24 and rod 23) attached to a support portion (comprising at least element 5) having at least one recess to retain the securing element for securing a chair to a stationary object (the floor in this case). Lecarpentier further teaches that his securing element is configured to support at least a food item (supported on the canvas 11). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry by adding a securing element having a rod and being capable of supporting a food item and that is attached to at least a recess in the support portion as taught by Lecarpentier in order to allow the user's "rocking motion to be controlled by light pressure with the foot on a pedal" (see Lecarpentier, Column 1, lines 22-25).

17. Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry as applied to Claim 1 in view of Mason in US Patent 5865412. Landry fails to teach a supporting element. Mason teaches a supporting element capable of independently supporting an accessory item, the supporting element being in the form of a cup holder. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry by adding a supporting element such as a cup holder as taught by Mason in order to support a cup holder on the chair.

18. Claims 23-30, 33-34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry in view of Lecarpentier.

l. Regarding Claim 23, Landry teaches a chair with a seat portion (61), a back rest portion (81) removably coupled to the seat portion (insofar as the applicant discloses a removably coupled relationship between the seat and back rest) and rocking means (A) removably attached (insofar as the applicant discloses a removably attached relationship between the rocking means and the seat and back rest portions) to the seat and back rest portions. Landry fails to disclose a securing element. Lecarpentier discloses a securing element (comprising elements 3, 10, 9, 12, 13, 8, 14, 23 and 24) for securing a chair to a stationary object (the floor in this case). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry by adding a securing element as taught by Lecarpentier in order to allow the user's "rocking motion to be controlled by light pressure with the foot on a pedal" (see Lecarpentier, Column 1, lines 22-25).

m. Regarding Claim 24, Landry, as modified, further teaches that the seat portion is adjustable with relative to the back rest portion.

n. Regarding Claim 25, Landry, as modified, further teaches that the angle between the seat portion and the back rest portion is between about 100 and 150 degrees (Landry teaches an adjustable relationship between the seat and the back rest: any of the positions between 100 and 150 degrees are possible).

- o. Regarding Claim 26, Landry, as modified, further teaches that the rocking means (10a) are made of metal (see Landry, Column 4, lines 45-46).
- p. Regarding Claim 27, Landry, as modified, further teaches that the rocking means substantially cradles said set portion and at least a portion of the back portion (the rocking portion supports the seat and back portion on two sides, the bottom and the back, which is considered sufficiently cradle-like).
- q. Regarding Claim 28, Landry, as modified, further teaches that the rocking means further comprises at least one supporting arc (10b) having a contact surface capable of supporting said chair with respect to the ground.
- r. Regarding Claim 29, Landry, as modified, teaches that the contact surface further comprises a stabilizing portion (22a) corresponding to the position of repose.
- s. Regarding Claim 30, Landry, as modified, further teaches that the contact surface rotates along a length of said supporting arc such that contact surface only partially contacts said ground anterior to said position of repose and such that said contact surface substantially fully contacts said ground beyond said position of repose (insofar as the applicant shows this).
- t. Regarding Claim 33, Landry, as modified, further teaches that the supporting arc extends beyond (in section 24a) a length of said rocking element to prevent over-rotation of said rocking element.
- u. Regarding Claim 34, Landry, as modified, further teaches that the supporting arc comprises a first end (14a) coupled to a lateral edge of the seat

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portion and a second end (16a) coupled to a back surface of the back rest portion.

v. Regarding Claim 38, Landry, as modified, fails to teach that the securing element is configured to support a food item. Lecarpentier further teaches that the securing element is capable of supporting a food item (on canvas 11). It would have been obvious to one of ordinary skill in the art at the time of invention to further modify the device of Landry, as modified, by using the canvas of Lecarpentier in order to increase the supporting capacity of the chair.

19. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry, as modified, as applied to Claim 30 above in view of Wade in US Patent D315643. Landry, as modified, fails to teach traction elements on the contact surface. Wade teaches a chair with a contact surface (A) having traction elements comprising teeth (B) that are integral to the rocking surface (insofar as the applicant shows teeth on the rocking surface). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the rocking surface of Landry, as modified, by adding teeth in order to increase the grip the rocking surface has on a slippery surface.

20. Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry, as modified, as applied to 23, and further in view of Tattrie in US Patent 5213394. Landry, as modified, fails to teach a handle on the back rest portion. Tattrie teaches a chair with a back rest (11) having a handle (21A). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry,

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as modified, by adding a handle in the back rest as taught by Tattrie in order to provide easy handling of the unit (see Tattrie, Column 3, lines 20-23).

21. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landry, as modified, as applied to Claim 23 above and further in view of Royle et al. Landry, as modified, fails to teach a protective covering on the support portion. Royle teaches a chair comprising a protective covering (see Royle, Column 3, lines 56-57). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry, as modified, by adding a protective covering as taught by Royle et al. in order to provide a replaceable covering which would extend the life of the device.

22. Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landry, as modified, as applied to Claim 23 in view of Mason in US Patent 5865412. Landry, as modified, fails to teach a supporting element. Mason teaches a supporting element capable of independently supporting an accessory item, the supporting element being in the form of a cup holder. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Landry, as modified by adding a supporting element such as a cup holder as taught by Mason in order to support a cup holder on the chair.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hursh, Braconnier et al., Metzger, Gillis, Reese, and Maija-Liisa

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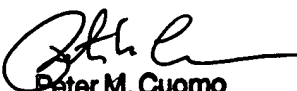
Komulainen teach rocker-backed chairs. Kaminski et al., Hosoe and Brauning teach tilting chairs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Noah C. Hawk whose telephone number is 571-272-1480. The examiner can normally be reached on M-F 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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